

THE UNITED STATES COURT OF FEDERAL CLAIMS

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Overlook At The Fairgrounds LP)	
Robert E. & Mary L. Hayes)	
Richard W. & Wendy A. Cass)	No. 18-1962 L
Harold G. Morgan)	
Cynthia Ann Cote)	
KLC Realty LLC)	
Alice M. Allen n/k/a Alice M. Rigsby)	
Violet L. Reynolds)	
Daniel L. & Linda M. Scott)	
Dennis E. & Christie Spurling and JW Goodwin)	
KAB Enterprises of Elwood, LLC)	
Patriot Engineering & Environmental, Inc.)	
Castleton Park Indianapolis LP)	
Boyd Realty LLC)	
4530 Properties LLC)	
Annetta M. Gill)	
Mark A. & Toni J. Van Horn)	
Michael R. Eldridge & Shari L. Held)	
Indiana Association of Seventh-day Adventists, Inc.)	
Ralph Mayfield & Joanne Hollingsworth Mayfield)	
John C. & Cherie L. Placie)	
Charlezetta L. Edwards)	
Robert J. Burkert & Linda Frances Burkert)	
RCCM LLC)	
The Lisa H. Jones Living Trust)	
Alinda L. & Rocky A. Edens Revocable Trust)	
Kathleen A. Leamon Bradfield)	
Gene K. Alderson)	
Cureton Properties, LLC)	
Harvey E. Campbell)	
Peggy Pfister)	
Marc L. Harbit)	
Dan R. Thomas)	
Spirit of Joy Church, Incorporated)	
Jaclyn P. Sage)	
Ana Contreras & Ana A. Dominguez)	
Jessica Ann & Frank Watz)	
Jacob T. Everett)	
Syds 19th Hole LLC)	
Resuha Tishner & Stephen S. Molden)	
Daniel L. Richter)	
John Dean Farms, Inc.)	
Denise L. Mack)	

Kevin J. & Alicia M. Wilson)
Larry J. & Linda J. Roudebush)
Anita Guffey)
Cicero Place Apartments LLC)
Castleton Village LP)
Eloise Starks)
Carson Manufacturing Company, Inc.)
)
Plaintiffs,)
)
vs.)
)
THE UNITED STATES,)
)
Defendant.)

COMPLAINT

JURISDICTION

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1491(a)(1) (“Tucker Act”) because this action presents a claim against the United States which is founded upon the Constitution and Statutes of the United States and because the United States is the Defendant.

STATUTES AND CONSTITUTIONAL PROVISIONS

2. Plaintiffs’ claims are based upon 1) the Fifth Amendment to the United States Constitution prohibiting the taking of private property for public use, without just compensation; 2) The National Trails System Act Amendments of 1983, 16 U.S.C. § 1247(d) (“Trails Act”); 3) The Tucker Act, 28 U.S.C. § 1491(a) (“Tucker Act”); and 4) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4654(c) (2000).

TAKINGS CLAIM

3. The cities of Fishers, IN, and Noblesville, IN, and Hamilton County, IN (collectively, “The Owners”), filed a petition for partial revocation of exemption with the Surface Transportation Board (“STB”) on August 1, 2017 seeking to abandon and railbank under

the Trails Act an approximately 37.5- mile rail line on between milepost I-2.13 at Indianapolis, IN, and milepost I-39.69 at Tipton, IN. (the “Railroad Line”).

4. The Railroad line was previously owned by Norfolk and Western Railway Company (“N&W”), who gained authority from the Interstate Commerce Commission to abandon the line in 1991.

5. The cities of Fishers and Noblesville purchased the Line from N&W in 1995, and Hamilton County became a joint owner of the Line in 2006.

6. The STB granted the Owners permission to proceed with rialbanking on May 29, 2018.

7. The Owners and their predecessors held only an easement limited to railroad purposes for the entire Railroad Line.

8. The easement lay across property owned by Plaintiffs.

9. Upon abandonment of the easement and/or authorization of use beyond the scope of the easement, Plaintiffs’ property would have been unburdened by any easement.

10. Plaintiff Overlook At The Fairgrounds LP, owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Overlook At The Fairgrounds LP’s property, including parcel number 8030109, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

11. Plaintiffs Robert E. & Mary L. Hayes owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. The Hayes’s property, including parcel number 03-02-12-00-00-014.000 includes the fee title to all that

property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

12. Plaintiffs Richard W. & Wendy A. Cass owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. The Cass' property, including parcel number 8032977, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

13. Plaintiff Harold G. Morgan owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Harold G. Morgan's property, including parcel numbers 03-02-12-03-03-001.000 and 03-02-12-03-03-014.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

14. Plaintiff Cynthia Ann Cote owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Cynthia Ann Cote's property, including parcel number 11-06-25-04-02-027.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

15. Plaintiff KLC Realty LLC owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. KLC Realty LLC's property, including parcel number 1084281, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

16. Plaintiff Alice M. Allen n/k/a Alice M. Rigsby owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Alice M. Allen n/k/a Alice M. Rigsby's property, including parcel number 03-02-12-00-00-013.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

17. Plaintiff Violet L. Reynolds owned land in Tipton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Violet L. Reynolds's property, including parcel number 80-11-36-300-003.000-001, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

18. Plaintiffs Daniel L. & Linda M. Scott owned land in Tipton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. The Scott's property, including parcel number 80-11-11-518-002.001-002, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

19. Plaintiffs Dennis E. & Christie Spurling and JW Goodwin owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Dennis E. & Christie Spurling and JW Goodwin's property, including parcel number 06-02-01-01-03-029.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

20. Plaintiff KAB Enterprises of Elwood, LLC owned land in Tipton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. KAB Enterprises of Elwood, LLC's property, including parcel numbers 80-11-11-510-029.000-002,

80-11-11-510-030.000-002 and 80-11-11-510-031.000-002, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

21. Plaintiff Patriot Engineering & Environmental, Inc. owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Patriot Engineering & Environmental, Inc.'s property, including parcel number 4004893, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

22. Plaintiff Castleton Park Indianapolis LP owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Castleton Park Indianapolis LP's property, including parcel number 4022536 and 4026663, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

23. Plaintiff Boyd Realty LLC owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Boyd Realty LLC's property, including parcel number 8061082, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

24. Plaintiff 4530 Properties LLC owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. 4530 Properties LLC's property, including parcel number 8031750, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

25. Plaintiff Annetta M. Gill owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Annetta M. Gill's property, including parcel number 8060115, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

26. Plaintiffs Mark A. & Toni J. Van Horn owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. The Van Horns' property, including parcel number 10-06-24-00-02-003.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

27. Plaintiffs Michael R. Eldridge & Shari L. Held owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Michael R. Eldridge & Shari L. Held's property, including parcel number 4018257, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

28. Plaintiff Indiana Association of Seventh-day Adventists, Inc. owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Indiana Association of Seventh-day Adventists, Inc.'s property, including parcel numbers 03-02-36-00-00-004.000, 03-02-25-00-00-009.000, 05-02-36-04-05-008.000, 03-02-25-00-00-006.000, 03-02-25-00-00-007.000, and 03-02-36-00-00-044.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

29. Plaintiff Ralph Mayfield & Joanne Hollingsworth Mayfield owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. The Mayfields's property, including parcel numbers 05-02-36-04-02-016.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

30. Plaintiffs John C. & Cherie L. Placie owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. The Placie's property, including parcel number 05-02-36-04-02-023.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

31. Plaintiff Charlezetta L. Edwards owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Charlezetta L. Edwards's property, including parcel number 8045152, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

32. Plaintiffs Robert J. Burkert & Linda Frances Burkert owned land in Tipton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. The Burkert's property, including parcel number 80-11-25-200-018.000-001, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

33. Plaintiff RCCM LLC owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. RCCM LLC's property,

including parcel number 1084279, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

34. Plaintiff The Lisa H. Jones Living Trust owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. The Lisa H. Jones Living Trust's property, including parcel number 8059181 4, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

35. Plaintiff Alinda L. & Rocky A. Edens Revocable Trust owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Alinda L. & Rocky A. Edens Revocable Trust's property, including parcel number 10-06-24-00-00-011.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

36. Plaintiff Kathleen A. Leamon Bradfield owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Kathleen A. Leamon Bradfield's property, including parcel number 8059390, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

37. Plaintiff Gene K. Alderson owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Gene K. Alderson's property, including parcel number 8037282, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

38. Plaintiff Cureton Properties, LLC owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Cureton Properties, LLC's property, including parcel number 8002878, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

39. Plaintiff Harvey E. Campbell owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Harvey E. Campbell's property, including parcel number 04-02-24-02-14-014.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

40. Plaintiff Peggy Pfister owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Peggy Pfister's property, including parcel numbers 11-06-25-04-01-011.001 and 11-06-25-04-04-001.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

41. Plaintiff Marc L. Harbit owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Marc L. Harbit's property, including parcel number 04-02-13-04-09-005.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

42. Plaintiff Dan R. Thomas owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Dan R. Thomas's property, including parcel number 10-06-24-04-02-001.000 includes the fee title to all that

property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

43. Plaintiffs Spirit of Joy Church, Incorporated owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Spirit of Joy Church, Incorporated's property, including parcel number 8002118, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

44. Plaintiff Jaclyn P. Sage owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Jaclyn P. Sage's property, including parcel number 06-02-01-01-08-024.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

45. Plaintiffs Ana Contreras & Ana A. Dominguez owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Ana Contreras & Ana A. Dominguez's property, including parcel number 1045366, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

46. Plaintiffs Jessica Ann & Frank Watz owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. The Watz's property, including parcel number 8038429, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

47. Plaintiff Jacob T. Everett owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Jacob T. Everett's property, including parcel number 05-02-36-02-01-004.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

48. Plaintiff Syds 19th Hole LLC owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Syds 19th Hole LLC's property, including parcel number 11-07-31-17-01-034.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

49. Plaintiffs Resuha Tishner & Stephen S. Molden owned land in Tipton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Resuha Tishner & Stephen S. Molden's property, including parcel number 80-11-11-518-007.001-002, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

50. Plaintiff Daniel L. Richter owned land in Tipton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Daniel L. Richter's property, including parcel number 80-11-11-518-050.000-002, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

51. Plaintiff John Dean Farms, Inc. owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. John Dean Farms, Inc.'s property, including parcel number 03-02-24-00-00-018.000, includes the fee title to all that

property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

52. Plaintiff Denise L. Mack owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Denise L. Mack's property, including parcel number 8059394, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

53. Plaintiffs Kevin J. & Alicia M. Wilson, owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. The Wilson's property, including parcel number 8060390, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

54. Plaintiff Larry J. & Linda J. Roudebush owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. The Roudebush's property, including parcel numbers 10-06-24-04-01-017.000, 10-06-24-04-01-019.000 and 10-06-24-04-01-018.000, include the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

55. Plaintiff Anita Guffey owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Anita Guffey's property, including parcel number 11-11-06-03-15-049.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

56. Plaintiff Cicero Place Apartments LLC owned land in Hamilton County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Cicero Place Apartments LLC's property, including parcel numbers 05-06-01-00-00-013.003, 05-06-01-04-05-004.000 and 03-06-01-00-00-013.000, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

57. Plaintiff Castleton Village LP owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Castleton Village LP's property, including parcel numbers 4004018 and 4035734, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

58. Plaintiff Eloise Starks owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Eloise Starks' property, including parcel number 8021308, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

59. Plaintiff Carson Manufacturing Company, Inc. owned land in Marion County adjacent to and underlying the Railroad Line on the date of the taking, December 21, 2018. Carson Manufacturing Company, Inc.'s property, including parcel numbers 8004762 and 8006105, includes the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to the easement for an interim trail use.

60. The cities of Fishers, IN, and Noblesville, IN, and Hamilton County, IN requested issuance of a Notice of Interim Trail Use ("NITU") for the purpose of forestalling state-law

abandonment of the line so that a public recreational trail could be established with the possibility for future reactivation as a railroad.

61. On December 21, 2018, the STB issued a NITU relating to the Railroad Line.

62. But for operation of the Trails Act, the Plaintiffs would have the exclusive right to physical ownership, possession and use of their property free of any easement for recreational trail use or future railroad use.

63. By operation of the Trails Act, the United States took Plaintiffs' property for which it is required to pay just compensation pursuant to the United States Constitution.

64. Plaintiffs owned the aforementioned property on the date of the taking, December 21, 2018, and are therefore proper claimants for compensation.

65. Plaintiffs' property includes the fee title to the property underlying the former railroad easement.

66. The United States' actions damaged Plaintiffs by taking a portion of Plaintiffs' property and by diminishing the value of the remaining property and by attenuating delay damages based upon the delayed payment of compensation.

WHEREFORE, Plaintiffs respectfully request a monetary judgment in their favor representing the full fair market value of the property taken by the United States on the date it was taken, including severance damages, delay damages, interest, and costs and attorneys' fees incurred by Plaintiffs and for such further relief as this Court may deem just and proper.

Date: December 21, 2018

Respectfully submitted,

BAKER STERCHI COWDEN & RICE, L.L.C.

By s/J. Robert Sears

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